No. 284

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, et al., *Appellees.*

On Appeal from the Supreme Court of Georgia

JURISDICTIONAL STATEMENT

Of Counsel:

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

ARNALL, GOLDEN AND GREGORY
Fulton Federal Building
Atlanta 3, Georgia

MILTON KRAMER
LESTER P. SCHOENE
1625 K Street, N. W.
Washington 6, D. C.

CLEBURNE E. GREGORY, JR.
Fulton Federal Building
Atlanta 3, Georgia

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United Sta

OCTOBER TERM, 1959

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS; INTERNATIONA
ERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HE
AMERICA; INTERNATIONAL BROTHERHOOD OF BLACKSMITH
FORGERS, AND HELPERS; SHEET METAL WORKERS INTERN
ASSOCIATION; INTERNATIONAL BROTHERHOOD OF EL
WORKERS; BROTHERHOOD OF RAILWAY CARMEN OF A
INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS,
ROUNDHOUSE AND RAILWAY SHOP LABORERS; BROTHER
RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
AND STATION EMPLOYES; BROTHERHOOD OF MAINTENANCE
EMPLOYES; ORDER OF RAILROAD TELEGRAPHERS; BROT
OF RAILROAD SIGNALMEN OF AMERICA; NATIONAL ORGA
MASTERS, MATES AND PILOTS; NATIONAL MARINE E
BENEFICIAL ASSOCIATION; AMERICAN TRAIN DISPATCHE
CIATION; RAILROAD YARDMASTERS OF AMERICA; L. C.
R. H. HUBBARD, NORMAN DUGGER, J. R. WESTBROO
PELKOFER, T. B. STEADMAN, C. J. BRICE, C. D. BRUN
ROBERTS, H. H. DENT, J. J. DUFFY, B. R. ACUFF, T. J.
IRVIN BARNEY, W. W. DYKE, W. B. CHAPMAN, ANTHO
J. H. DESOTELL, LEWIS CRAIG, GEORGE M. HARRISON, G.
J. D. AVERA, J. P. ALEXANDER, G. W. BALL, R. K.
F. G. GARDNER, H. R. DUENSING, E. V. PEED, JESS
E. C. MELTON, F. O. DASHER, B. T. HURST, JOHN M.
W. L. BALL, WILLIAM O. HOLMES, O. H. BRAESE, R. M
FORD, T. W. GRIMMETT, M. G. SCHOCH, H. E. IVEY, T.
AND CHARLES J. MACGOWAN, *Appellants*,

v.

S. B. STREET; HAZEL E. COBB; J. H. DAVIS; MRS.
FRITSCHEL; NANCY M. LOOPER; MRS. ELIZABETH F
GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY; S
RAILWAY COMPANY; CINCINNATI, NEW ORLEANS AN
PACIFIC RAILWAY; ALABAMA GREAT SOUTHERN RAILR
PANY; NEW ORLEANS AND NORTHEASTERN RAILROAD C
CAROLINA AND NORTHWESTERN RAILWAY COMPAN
ORLEANS TERMINAL COMPANY; ST. JOHNS RIVER T
COMPANY; AND HARRIMAN AND NORTHEASTERN RAILR
PANY, *Appellees*.

On Appeal from the Supreme Cou

JURISDICTIONAL STAT

Appellants appeal from a final
Supreme Court of Georgia entered
affirming a judgment of the Superi
County, Georgia, permanently enjoi
ance of union-shop agreements bet
company defendant-appellees and th
tion defendant-appellants; declarin
enth of the Railway Labor Act to b
to the extent that it permits the c
under a union-shop agreement and t
a portion of such funds in legislat
other activities other than the negoti
tration of collective bargaining agre
said union-shop agreements null an
the enforcement of said agreemen
awarding plaintiffs damages in th
dues and fees they had paid while t
the union-shop agreements was not
lants submit this Statement to show
Court of the United States has juris
peal and that a substantial questio

OPINIONS BELOW

The opinion of the Supreme Cou
the first appeal, *sub nom. Looper* v. *G*
is reported in 213 Ga. 279, 99 S.E.
attached hereto as Appendix A. T
Supreme Court of Georgia on the
reported in Ga. , 108 S.E. 2

attached hereto as Appendix B. A copy of th
ings, Conclusions, Order, Judgment and De
the Superior Court of Bibb County, Georgi
was affirmed by the decision appealed fro
reported and is attached hereto as Appendix

JURISDICTION

This action was brought in the Superior
Bibb County, Georgia, by certain employee
Southern Railway Company and one of its sub
to enjoin that company and its subsidiaries (
ing the Southern Railway System) and the
labor unions from performing union-shop ag
entered into by the said railroad companies
said unions pursuant to Section 2, Eleventh
Railway Labor Act (Act of Jan. 10, 1951, c.
Stat. 1238, U.S.C. Tit. 45, sec. 152, Eleven
among other items of relief, to declare said
Eleventh unconstitutional and ineffective to
state law. The plaintiffs purported to sue
selves and all others allegedly similarly situa
judgment of the Supreme Court of Georgia wa
May 8, 1959 and Notice of Appeal was file
Court on June 5, 1959.

The jurisdiction of the Supreme Court
the decision by appeal is conferred by Title 2
sections 1257(1) and 1257(2). The follow
sustain the jurisdiction of the Supreme Court
the judgment on appeal in this case: *Wissne*
ner, 338 U.S. 655; *Bethlehem Steel Co.* v. *N*
State Labor Relations Board, 330 U.S. 767; *I*
Telephone Corp. v. *Wisconsin Employment*
Board, 336 U.S. 18; *Ry. Employes Dept.* v. *Ho*
U.S. 225.

STATUTES INVOLVE

This appeal involves the validi
Eleventh of the Railway Labor Act
10, 1951, c. 1220, 64 Stat. 1238, U.S.
Eleventh), which reads in pertinent

"Eleventh. Notwithstanding
sions of this Act, or of any oth
of the United States, or Territ
any State, any carrier or carri
this Act and a labor organizatio
zations duly designated and auth
employees in accordance with th
this Act shall be permitted—

"(a) to make agreements, re
dition of continued employment
days following the beginning of
or the effective date of such a
ever is the later, all employees
bers of the labor organization
craft or class: *Provided*, That
shall require such condition of
respect to employees to whom
available upon the same terms
are generally applicable to any
with respect to employees to
was denied or terminated for
than the failure of the emplo
periodic dues, initiation fes, and
including fines and penalties) u
as a condition of acquiring or
ship.

"(b) to make agreements pro
duction by such carrier or carrie
of its or their employees in a
payment to the labor organiza
the craft or class of such e
periodic dues, initiation fees, an

including fines and penalties) uniformly
as a condition of acquiring or retaining
ship: *Provided,* That no such agreement
effective with respect to any individual e
until he shall have furnished the employe
written assignment to the labor organiz
such membership dues, initiation fees, an
ments, which shall be revocable in writi
the expiration of one year or upon the ter
date of the applicable collective agreement
ever occurs sooner.

* * * * *

"(d) Any provisions in paragraphs Fo
Fifth of section 2 of this Act in conflict
are to the extent of such conflict amende

Georgia Code, ch. 54-9:

Sections 54-901 through 54-904 provide:

"54-901 Definitions.—When used in this C

"(a) The term "employer" includes an
acting in the interest of an employer, di
indirectly, but shall not include the Unite
or any State, or any political subdivision
or any person subject to the Railway La
as amended from time to time, or any labo
zation (other than when acting as an e
or any one acting in the capacity of officer
of such labor organization.

"(b) The term "employee" shall incl
employee, and shall not be limited to the e
of a particular employer.

"(c) The term "employment" means
ment by an employer as defined in this C

"(d) The term "labor organization" m
organization of any kind, or any agency
ployee representation committee or plan,

employees participate and whic
purpose, in whole or in part, of
ployers concerning grievances,
wages, rates of pay, hours of emp
ditions of work.

"54-902. Membership in labor org
dition of employment.—No indivi
quired as a condition of employm
ued employment, to be or remain
affiliate of a labor organization, o
to refrain from membership in o
a labor organization.

"54-903. Payment to labor orga
dition of employment.—No indi
required as a condition of employ
tinuance of employment, to pay
ment, or other sum of money
labor organization.

"54-904. Contracts requiring me
payments to, labor organizations
public policy.—Any provision in
tween an employer and a labor or
requires as a condition of employ
tinuance of employment, that an
come or remain a member or an a
organization, or that any individ
assessment, or other sum of mone
a labor organization, is hereby de
trary to public policy of this Sta
provision in any such contract he
after made shall be absolutely voi

QUESTIONS PRESENTE

The following questions are pre
appeal:

1. Whether the Supreme Court of
holding the union-shop amendment

Labor Act (as amended, sec. 2, Eleventh, A
10, 1951, 64 Stat. 1238, U.S.C. tit. 45, § 152,
unconstitutional and invalid.

2. Whether the Supreme Court of Georgi
holding that union-shop agreements entered
suant to the Railway Labor Act are unc
and invalid.

3. Whether the Supreme Court of Georgi
holding Georgia law and the laws of other S
and applicable to union-shop agreements
carrier subject to the Railway Labor Act an
designated representatives of its employees,
acknowledged repugnance of such law so
section 2, Eleventh of the Railway Labor A
claimed repugnance to the Constitution of
States by reason of Congressional preempt
field.

4. Whether the Supreme Court of Georg
affirming a judgment permanently enjoinin
formance of union-shop agreements subject
compliance with the Railway Labor Act.

5. Whether the Supreme Court of Georg
holding that the use, by a union having a
agreement, of a part of its dues receipts fo
other than the negotiation and administrat
lective bargaining agreements concerning ra
rules and working conditions, or wages, ho
or other conditions of employment, violate
tional rights under the First and Fifth A
of employees subject to such union-shop ag

6. Whether the Supreme Court of Georg
holding that the decision of the Supreme C
United States in *Railway Employes' Dept.*

351 U.S. 225, is inapplicable where it is found that a union having a union-shop agreement spends part of its funds for political and legislative purposes.

7. Whether the appellants were denied due process of law by the holdings of the Supreme Court of Georgia:

(a) That the procedural rulings of the trial court did not deny appellants a fair opportunity to defend this action.

(b) That a class action may properly be brought on behalf of persons whose membership in the class is determined by ascertaining a combination of mental attitudes of each person.

(c) That the plaintiffs in the trial court had standing to sue unions not representatives of the class in which they are employed, with respect to collective bargaining agreements not affecting them.

(d) Sustaining the same findings of fact with respect to all the union defendants despite the substantial difference in the evidence with respect to the several union defendants.

(e) Sustaining findings of fact not supported by any evidence.

STATEMENT OF THE CASE

The railroad companies are common carriers by railroad subject to the Interstate Commerce Act, comprising the Southern Railway System. As such they are "carriers" within the meaning of and subject to the Railway Labor Act. The labor union appellants, who are the real parties in interest as appellants, are

standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway, and the individual appellees are members of one of the crafts so represented.

One of the individual appellees is a resident of and employed in Mississippi, one is a resident of and employed in the District of Columbia, and the remaining four are residents of and employed in Georgia. All are represented for purposes of collective bargaining by appellant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. They purport to sue on behalf of all employees of any of the Southern Railway Companies represented in collective bargaining by any of the appellant unions, resident in the various states in which the Southern operates.

By the Act of January 10, 1951 (set forth above) Congress amended the Railway Labor Act so as no longer to prohibit all forms of union-security agreements but instead to permit union-shop agreements subject to the limitations and conditions prescribed by the statute. It was specifically provided that such agreements should be permitted "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State." Thereafter, the railroad companies entered into union-shop agreements with the appellants substantially in the terms of the 1951 amendment to the Railway Labor Act, complying with all the conditions and incorporating all the limitations required by the Act. The agreements require (subject to certain conditions and limitations not relevant here) that all

employees covered by the basic collective bargain agreement between the carrier and the union, a condition of their continued employment, bec members of the union representing their craft class within 60 days after the beginning of such ployment, or after the effective date of such ag ment, whichever is later. However, no such condit of employment applies to any employee to wh membership is not available on the same terms conditions as are generally applicable, nor to employee who might be denied membership or wh membership might be terminated for any reason ot than failure to tender the periodic dues, initiation and assessments (not including fines and penalti uniformly required as a condition of acquiring or taining membership. The union shop agreeme involved here, except for the names of the parties, identical with the union shop agreement before Court in *Railway Employes' Department* v. *Han* 351 U.S. 225.

The individual appellees chose not to comply w this condition upon their continued employment the Southern. Instead they brought, or intervened this action seeking to enjoin the enforcement of union shop agreements claiming that the agreeme violated their rights under the Constitution of United States and under the so-called "right-to-wo provisions of the statutes of Georgia and the laws other States.

In January 1957 the appellants filed a motion dismiss the complaint as theretofore amended on ground that it failed to state a cause of action. At hearing on that motion the individual appellees offe further amendments to the complaint alleging that

appellant unions used a portion of their dues receipts in support of legislative and political activities with which said appellees disagreed. The trial court accepted the amendments, treated the motion to dismiss as directed to the complaint as so amended, and so treating it granted the motion and dismissed the complaint on the authority of this Court's decision in the *Hanson* case, *supra*. On appeal to the Supreme Court of Georgia that Court reversed the trial court in what must be one of the most intemperate opinions ever issued by an American judicial tribunal. See Appendix A. In essence, it held that it need follow this Court's ruling in the *Hanson* case only with respect to the precise ruling, and not with respect to any implications except insofar as implications adverse to these appellants might be extracted from certain language in the *Hanson* opinion. The Supreme Court of Georgia was of the view that apparently this Court did not appreciate that unions engage in legislative and political activities, and was of the further view that certain language in the *Hanson* opinion could be interpreted to reserve decision on the constitutionality of section 2, Eleventh of the Railway Labor Act in permitting union shop agreements by unions that engaged in such activities.

On remand to the Superior Court of Bibb County, appellants were subjected to a host of astonishing and oppressive procedural rulings which appellants claimed deprived them of a fair opportunity to defend this case. After ultimate trial proceedings, the Superior Court entered the order attached hereto as Appendix C, declaring section 2, Eleventh unconstitutional insofar as it permitted the union shop agreements and holding the law of Georgia and other States

effective and applicable despite the declaratio section 2, Eleventh that Congress preempted the and superseded State law.

How the federal question is presented. The plaint itself alleges that section 2, Eleventh of Railway Labor Act, to the extent that it autho the union shop agreements here involved, is viol of the First, Fifth, Ninth, and Tenth Amendmen the Constitution of the United States. R. 143-4. alleges also that the union shop agreements are ill and unconstitutional and in violation of the Geo right-to-work laws and the laws of other States se by the railroads. Appellants of course controve said allegations, alleged that the union shop ag ments were executed in accordance with the Rail Labor Act, and admitted the allegation that negotiating the union shop agreements they relie the validity of section 2, Eleventh of the Rail Labor Act. The answer of the railroads like challenged the applicability of State laws to the u shop agreements in view of the specific preemptio the field by Section 2, Eleventh.

The Superior Court of Bibb County, on Decembe 1958, issued its "Findings, Conclusions, Order, Ju ment and Decree", a copy of which is attached he as Appendix C. In that document the Superior C held that the union shop agreements violate the stitution and law of Georgia and the law of o States in which the railroads operate. R. 186. found also that said agreements violate the Const tion of the United States by invading the indivi appellees' personal and property rights, includ freedom of speech, freedom of press, freedom thought, freedom to work, and political freedom

rights. R. 186. In said document the Court also entered a declaratory judgment finding and declaring section 2, Eleventh of the Railway Labor Act unconstitutional to the extent that it permits union shop agreements under which dues receipts are spent in part for the complained of purposes and activities. R. 188. It entered also a declaratory judgment finding and declaring the enforcement of the union shop agreements illegal in that they deprived the plaintiffs of rights under the Constitution of the United States and the laws of the State of Georgia and other States, thus denying validity to the federal law and sustaining the validity of State law challenged for repugnance to the federal law and the supremacy clause of the Constitution. On appeal to the Supreme Court of Georgia that judgment with its multifarious other findings, declarations, and restraints, was affirmed.

The opinions of the Supreme Court of Georgia, if we understand them correctly, hold that by preempting the field and repealing the former prohibition of union shop agreements in the Railway Labor Act, Congress transgressed the limitations of the United States Constitution by requiring the individual appellees to do things Congress could not validly require them to do, and that section 2, Eleventh was ineffective to make the law of Georgia and other States inapplicable. In any event, regardless of the reasoning of the opinions, and whether or not we understand them, it is clear that the decision below denies validity to a statute of the United States and sustains the validity of State law repugnant to the federal statute and to the power of Congress under the Constitution to regulate interstate commerce. Further, it is clear that the decision below interprets

the decision of this Court in the *Hanson* case as not involving any question of the validity of section 2, Eleventh and union shop agreements executed thereunder in the presence of evidence and contention that the unions involved spend a portion of their funds in legislative and political activities, although the record and briefs and argument in this Court in the *Hanson* case are replete with such material and contentions.

THE QUESTIONS ARE SUBSTANTIAL

If the decision appealed from had been opposite to what it was, it might then well be considered to have been so clearly right that no substantial federal question would be involved. *Railway Employes' Department* v. *Hanson,* 351 U.S. 225; *Sandsberry* v. *International Association of Machinists,* 295 S.W. 2d 412, cert. den. 353 U.S. 918; *Otten* v. *S.I.R.T. Co.,* 205 F. 2d 58, 229 F. 2d 919, cert. den. 351 U.S. 983; *Wicks* v. *Brotherhood,* 121 F. Supp. 454, 231 F. 2d 130, cert. den. 351 U.S. 946. On the other hand, we find it difficult to conceive of a decision by the highest court of a State denying validity to a federal statute and giving effect to State laws despite their obvious repugnance to the federal statute that would not present substantial federal questions calling for review by this Court.

1. *The decision appealed from is clearly wrong.* This case is squarely covered by the decision of this Court in the *Hanson* case. Despite the refusal of the Supreme Court of Georgia to see it, the record and argument in the *Hanson* case squarely presented the issues of the validity of section 2, Eleventh and agreements executed thereunder where the unions executing

such agreements engage in legislative, political, and other activities other than the negotiation and administration of collective bargaining agreements. See *Hanson* record, pp. 103, 107, 109-10, 112, 115-16, 125-6, 126-8, 135-6, 143-4, 146, 151, 184-5, 204, 223, 256. See brief of Hanson et al. in the *Hanson* case, headings appearing on pp. 14, 16, 17, 58, 67, 68, 71, 75. Indeed, the decision of the Supreme Court of Nebraska, which this Court reversed in the *Hanson* case, held section 2, Eleventh and agreements entered into pursuant thereto invalid for precisely the reasons they were held invalid by the Court below, that is, because the unions spend part of their funds derived from dues for purposes other than the negotiation and administration of collective bargaining agreements. The decision of the Supreme Court of Nebraska, which this Court reversed in the *Hanson* case, was predicated on exactly the same basis as the decision below in this case.

Even prior to the decision of this Court in the *Hanson* case, this Court on a number of occasions decided cases involving union shop or closed shop agreements, consistently indicating that the question of whether such agreements should be unrestrictedly permitted, completely prohibited, or permitted subject to prescribed limitations, is a matter of policy for legislative determination rather than of constitutional requirements for determination by the courts. *Colgate-Palmolive-Peet Co.* v. *N.L.R.B.*, 338 U.S. 355; *Lincoln Union* v. *Northwestern Co.*, 335 U.S. 525; *A.F. of L.* v. *American Sash and Door Co.*, 335 U.S. 538; *Algoma Plywood Co.* v. *Wisconsin Emp. Rel. Bd.*, 336 U.S. 301.

2. *The decision appealed from is in decisions of other State and federal cou*

Cited above are some of the federal a with which the decision below is in conf tion we call the attention of the Cour decision of the Supreme Court of lina which squarely and acknowledg with the views of the Supreme Court of case presenting the same substantive evi same contentions. *Allen et al.* v. *Sout Company et al.*, 249 N.C. 491, 107 S.E. 2d time of writing this Statement that decis reconsideration by the Supreme Cou Carolina.) In that opinion, the Supr North Carolina recognizes the conflict there expressed with the views of the S of Georgia in this case, and suggests th is for resolution by this Court. We poin contract and parties in the *Allen* case same contract and parties involved in both cases a few individuals purported to of the non-operating employees of the the North Carolina case the Supreme State held that North Carolina resident the Southern are subject to the agreem volved because the North Carolina law superseded by section 2, Eleventh. But i case relief is given to those very same N plaintiffs because the Georgia courts ar that the North Carolina law is applicabl validly superseded by section 2. Eleventh.

3. *The decision involves important functioning of the Railway Labor Act.* agreements, in most cases identical wit

ments here involved and in the remaining cases
stantially the same as the agreements here invo
have been entered into by appellants with almo
the railroads in the United States. Such agreer
have been executed with all but one of the major
roads, and are in effect on all said railroads exce
the extent that the courts below have limited
enforcement on the Southern. The few railroad
organizations that are not parties in this case sim
have innumerable such agreements. The validi
all these agreements is challenged by the de
below. In this case, appellants are prohibite
judicial decree from doing that which Congres
said they "shall be permitted" to do.

4. *The Supreme Court has jurisdiction to ente
this case on appeal under U.S.C. Title 28, Se
1257(1) and 1257(2).* As we have pointed out a
appellants in the trial court relied on the auth
of Section 2, Eleventh of the Railway Labor A
supporting the validity of the union shop agree
under attack and the repugnance of State law t
federal law; indeed, the plaintiffs themselves i
trial court alleged that such was our position, a
admitted it. The individual appellees prayed
decree declaring the federal law unconstitutiona
such prayer was granted. There was thus "dra
question the validity of a * * * statute of the U
States", as required by Section 1257(1).
individual appellees also relied on State law
mining the validity of the agreements inv
although said law was repugnant to the federa
and would, under the supremacy clause of the
stitution, be invalid by reason of the congres
preemption. Thus there was "drawn in questio

validity of a statute of any state on the
being repugnant to the Constitution, tre
of the United States, and the decision is
its validity", as provided by Section 1257
the heading "Jurisdiction" above we ci
examples of the exercise of jurisdiction
statutory provisions. We submit that
cability of both Section 1257(1) and 125
clearly apparent in the instant cas
applicability of either of those sections
cases in which jurisdiction on appeal was

CONCLUSION

It is submitted that the decision of t
Court of Georgia erroneously deprived t
unions of important rights guarantee
federal law, erroneously prevents the
federal law, and erroneously subjects th
tions of state law that cannot be co
applied to them. The questions prese
appeal are substantial and of public im

Respectfully submitted,

SCHOENE AND KRAMER

MILTON KRAM
LESTER P. SCH

ARNALL, GOLDEN & GREGORY

CLEBURNE E. G

e ground of it
eaties or laws
is in favor of
57(2). Under
cited cases as
on under those
at the appli-
257(2) is more
ase than the
ns in the cited
as exercised.

of the Supreme
ed the appellant
nteed them by
ne operation of
them to limita-
constitutionally
esented by this
e importance.

d,

RAMER
SCHOENE

E. GREGORY, JR.

APPENDIX

APPENDIX

APPENDIX A

NANCY M. LOOPER, ET AL.

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY CO.,

No. 19685

Opinion of the Supreme Court of Georg
June 10, 1957

By the Court:

1. Where pursuant to terms of the employme petitioners were notified that unless they becam of a labor union within 60 days their employ be terminated, the suit to enjoin such action an the contract void was not prematurely filed.

2. While we must follow the holding of th Court that closed shop employment contracts Eleventh, of the Railway Labor Act, are valid that court has not held that an employee ca contract be required as an alternative to losing join a union which will use contributions he ma promote ideological and political issues and ca opposes, we hold that the petition of these empl ing to enjoin the enforcement of the employme and decree it void because of such uses of thei tions alleges a cause of action and it was erro the same.

This is an action for injunctive relief to prevent the defendants, composed of a number of railroad companies and various labor organizations which are the bargaining agents of the employees of such railroad carriers, enforcing a closed or union shop agreement entered into by the defendants and discharging the petitioners who are named employees of said railroad carriers unless they join or remain members of a union. The petitioners also pray that the so-called "union shop agreement" be declared void. The petitioners allege that the agreement requires the employees to join or remain members of the various labor organizations applicable to their craft or trade as a condition precedent to the continued employment with the various carriers by whom the petitioners are now employed and are threatened with discharge unless the actions of the defendants in enforcing such contract is enjoined. The contract is set out as an exhibit attached to the petition and requires all employees to become members of the labor organization party to this agreement representing their craft or class within 60 days after the effective date of the agreement. The contract is attacked as being illegal, unconstitutional and void, and in direct violation of the Georgia right to work laws (Code Ann. Supp., §§ 54-801 through 54-908; Ga. L. 1947, pp. 616-620), the Fifth and Fourteenth Amendments of the Federal Constitution, and certain named sections of the Georgia Constitution.

By amendment petitioners further allege that the initation fees, periodic dues and assessments which they would be required to pay under the closed shop agreement will be used in substantial part for purposes not germane to collective bargaining but to support ideological and political doctrines and candidates which they are not willing to support, and cannot lawfully be forced to support, thus violating their constitutionality guaranteed rights of freedom of association, thought, liberty and property; and the contract and § 2, Eleventh, of the Railway Labor

Act (45 U.S.C.A. § 152, Eleventh), to the extent that it authorizes such union shop agreement, are violative of the First, Fifth and Ninth Amendments of the Constitution of the United States.

After consideration of a written motion to dismiss, brought by counsel for the labor union defendants which states that petitioners fail to state a claim against any defendants upon which relief can be granted, citing decisions of the Federal Supreme Court in support thereof; the lower court sustained the motion, dissolved a temporary injunction previously granted, and dismissed the action as to all defendants. The exception here is to this final judgment.

Duckworth, Chief Justice. 1. The contract complained of was effective April 15, 1953. These petitioners were notified that unless they became members of the union within 60 days from the effective date of the contract their employment would be terminated. This notice accords with a clause in the contract. Thus is alleged and shown by the petitioners definite inpending danger of losing their jobs unless this procedure which conforms to the alleged void contract is halted. While a mere apprehension will not authorize resort to equity, *Railway Emp. Dept.* v. *Hanson*, 351 U. S. 225, 76 S. Ct. 714; *Mayor, etc., of Athens* v. *Co-op Cab Co.*, 207 *Ga.* 505 (2) (82 S. E. 2d 906); *Nottingham* v. *Elliott*, 209 *Ga.* 481 (3) (74 S. E. 2d 93); *Armed Forces Service Co.* v. *Petree*, 211 *Ga.* 867 (1) (89 S. E. 2d 486), yet one is not required to await the infliction of the injury before seeking to prevent it by injunction. Indeed these petitioners would have appealed to equity too late if they had awaited the completion of the 60 days notice period and the overt act of discharging them. *Mount* v. *The Grand International Brotherhood of Locomotive Engineers*, 226 Fed. 2d 604; *Sandt* v. *Mason*, 208 *Ga.* 541 (67 S. E. 2d 767).

While as indicated above this appeal to equity for injunctive relief is based upon facts and not mere apprehension

and is therefore not premature, there is an additional
son why the judgment dismissing the amended peti
can not be sustained upon the ground it is premature,
that is the prayer that the contract be decreed illegal
void.

2. § 2, Eleventh, of the Railway Labor Act (45 U. S. (
§ 152, p. 481) plainly authorizes the embodiment
"closed shop" clause in contracts of employment, an
sweeping terms, nullifies all State laws in conflict th
with. The Supreme Court upheld the constitutionalit
such a contract under the act in *Railway Emp. Dep
Hanson*, 351 U. S. 225, *supra*. To uphold a closed
contract the court necessarily approved a denial of
right to work because he is not a member of a labor u
We do not see a possibility of reconciling that ruling w
is based solely upon the status of the individual whi
that of non-union and is entirely lawful, with the follo
chain of decisions of the same court holding that one
not be lawfully denied the right to work because of
status as indicated therein—because he was a Ro
Catholic priest, *Cummings* v. *State of Missouri*, 71
277, 4 Wall. 277, 18 L. Ed. 356; a Chinese immigrant,
Wo v. *Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed.
a teacher of German, *Meyer* v. *Nebraska*, 262 U.S.
43 S. Ct. 625, 67 L. Ed. 1042; a freight train condu
Smith v. *Texas*, 233 U.S. 630, 34 S. Ct. 681, 58 L. Ed. 1
a State employee, *Wieman* v. *Updegraff*, 344 U.S. 18
S. Ct. 215, 97 L. Ed. 216; a Negro, *Steele* v. *Louisvil
N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 17
teacher in a municipally supported school, *Slochower* v.
of Higher Ed. of City of New York, 350 U. S. 551, 76 S
637. It strikes us as being a futile gesture to solemnly
clare the sacred and indestructible constitutional rig
one to freedom of speech and freedom of worship, and
sanction a denial of that same one's right to work whic
the indispensable economic support without which nei

freedom could endure. One could not for long enjoy speaking and worshiping freely if he was hungry and was denied bread or the means of obtaining it.

Anyone familiar with the experiences of the thirteen original colonies under the dictatorial powers of the King as expressed in the Declaration of Independence, the reluctance of the States to surrender or delegate any powers to a general government as evidenced by the Articles of Confederation, and the demonstrated need for more powers in the area where jurisdiction was given the general government, will have no difficulty in clearly understanding the meaning of the Constitution when it defines those powers, and by the Ninth and Tenth Amendment removes all doubt but that powers not expressly conferred were retained by the States. Even the school children in these original States know that solely because of the erection by individual States of trade barriers inimical to other States, and the inability to remove this evil by State action, the commerce clause, art. 1, sec. 8, par. 3 (Code § 1-125), invested the general government with exclusive jurisdiction of interstate commerce to insure the free flow of commerce across State lines. But claiming authority under this clause the Congress, with the sanction of the Supreme Court, has projected the jurisdiction of the general government into every precinct of the States and assumed Federal jurisdiction over countless matters, including the right to work, which are remotely, if at all, related to interstate commerce. By this unilateral determination of its own powers the general government has at the same time and in the same manner deprived its creators, the States, of powers they thought and now believe they retained. But State courts, irrespective of contrary opinions held by their own judges which by law are required to have had experience as practicing attorneys before they can become judges of the law, must obey and accept the decisions of the Supreme Court of the United States pertaining to interstate commerce. We be-

lieve that a single person armed with right—*the righ work*—should in all courts of justice be able to defeat selfish demands of multitudes though they be member a labor union who seek to deprive him of that right. would so rule in any case where we are allowed juris tion. When the Supreme Court has, as seen above, held closed shop labor contract act valid we must likewise h not upon our own judgment, but solely because we required to follow the Supreme Court ruling. We h made these observations to indicate our deep distress the utter helplessness of a free American under this and our inability to judge his cause according to our un standing of the Constitution.

We go now to the single point raised which the Supr Court has, we believe, clearly indicated is still open decision. The petition of these non-union employees all that they have been notified in accordance with the and the contract of employment that unless they bec members of a union within 60 days their employment be terminated. It is alleged that the union dues and o payments they will be required to make to the union be used to "support ideological and political doctrines candidates" which they are unwilling to support an which they do not believe, and that this will violate First. Fifth and Ninth Amendments of the Constitut While *Railway Emp. Dept.* v. *Hanson*, 351 U. S. 225, su upheld the validity of a closed shop contract execu under § 2, Eleventh, that opinion clearly indicates that court would not approve a requirement that one the union if his contributions thereto were used as petition alleges. It is there said "Judgment is reser [italics ours] as to the validity or enforceability o union or closed shop agreement if other conditions of m membership be imposed or if the exaction of dues, in ation fees or assessments is used as a cover for enforc ideological conformity or other action in contravention the First or the Fifth Amendments." We must rem

judgment now upon this precise question. We do not believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes. We believe his right to immunity from such exaction is superior to any claim the union can make upon him.

Accordingly, the trial court erred in dismissing the amended petition which alleges that such uses will be made of dues and other money which as a member of the union petitioners would be required to contribute to the union.

Judgment reversed. All the Justices concur.

APPENDIX B

IN THE SUPREME COURT OF GEORGIA

Decided May 8, 1959.

By the Court:

20428. INTERNATIONAL ASSOCIATION OF MACHINISTS et al. v. STREET et al.

1. The plaintiffs in error not having excepted by cross-bill of exceptions to the order allowing the amendment of January 29, 1957, when this case was here before (Looper v. Georgia Southern & Florida Ry. Co., 213 Ga. 279, 99 S.E. 2d 101), it is now too late to except to such order.

2. The amendment of September 23, 1958 to the petition was not subject to the objections interposed.

3. Unless the legal rights of the parties are prejudiced or denied, this court will not interfere with the discretion of the trial court in matters of practice in the hearing and disposition of causes before it unless this discretion has been exercised in an illegal, unjust or arbitrary manner.

4. The findings of fact and conclusions o
in the final decree are fully supported by th
evidence.

5. The plaintiffs and the class they re
common interest in the subject matter of t
ultimate issues to be decided. The objection
by the court that this was properly a class a
under Code § 37-1002 are without merit.

6. The finding by the court in its decree
ant unions were using the funds derived fro
of dues, fees and assessments from their m
pagate and promote political and economic
cepts and ideologies opposed by the plaintif
they represent, was demanded by the evide

7. The finding by the court that the exa
in the form of dues, fees and assessments,
ant unions, was by virtue of the closed s
between the defendant railroads and the d
permitted under Section 2. (Eleventh)
Labor Act (45 U.S.C. Sec. 151 et seq.); a
of such union funds for the purposes set ou
ing headnote, was violative of the plaintif
the First and Fifth Amendments to the Co
United States, was authorized by the law a

ALMAND, Justice. When this case was b
on a bill of exceptions assigning error on
the plaintiffs' petition, we reversed the or
because, by reason of the allegations of p
of the amended petition that, "The initiatio
dues and assessments which plaintiffs woul
pay under the terms of the union shop ag
fore referred to will be used in substantial p
not germane to collective bargaining but t
logical and political doctrines and candidat
tiffs are not willing to support and can

forced to support, thus violating plaintiffs' constitut
guaranteed rights of freedom of association, thought,
and property," and of paragraph 51 of the amende
tion that, "Petitioners allege that Sec. 2 Eleventh
Railway Labor Act (45 U.S.C.A. Sec. 152 Eleventh)
extent that it authorizes the union shop agreement
fore referred to, and said agreement, are violative
First, Fifth and Ninth Amendments to the Const
of the United States of America, and are theref
valid," the petition as against a general demurr
sufficient to state a cause of action for equitable
(Looper v. Georgia Southern & Florida Ry. Co., 2
279, 99 S. E. 2d 101). We there said, that thou
ruling of the Supreme Court of the United States
the validity of a closed shop agreement executed und
2, Eleventh, of the Railway Labor Act (45 U.S.C.A.
in view of the statement made in the opinion that,
ment is reserved as to the validity or enforceabili
union or closed shop agreement if other conditions o
membership are imposed or if the exaction of due
ation fees or assessments is used as a cover for
ideological conformity or other action in contraven
the First or the Fifth Amendment," the ques
whether the closed shop agreement violated the pl
rights under the First and Fifth Amendments
Federal Constitution, under the alleged facts in th
was left open for future determination.

When the case was returned to the trial court the
ant unions filed their answers. At a pre-trial hea
trial judge entered an order requiring the union def
to produce certain books, documents and records
appearance of officers and agents to testify with re
them. The motion of the union defendants to susp
order until their plea of res adjudicata could be
into, was denied. On September 23, 1958 the plaint
an amendment to their petition. The objections
union defendants to this amendment were overrule

later pre-trial hearing the plea of res adjud
drawn. A stipulation of facts, executed by al
August 14, 1958 was approved by the court
stipulation consists of 85 stipulations cove
We set out here only those stipulations we de
nent to the issues.

2. "Each of the plaintiffs and each of
plaintiffs was an employee of one of the r
ants herein (collectively constituting the So
System) in a craft or trade covered by
agreement at the commencement of this liti

3. "Some of the plaintiffs and intervenin
not now, and never have been, members of
fendant labor union organizations (their st
tected by supersedeas bond).

8. "Each of the plaintiffs, and intervening
the class they represent received notice, both
road defendant employer and the labor u
applicable to his or her craft or trade, that
became a member of the appropriate labo
ant within 60 days of the date he or she
compensated service for the railroad defen
60 days of the effective date of the union s
whichever is the later, such employment
inated and such employee dismissed pursua
shop agreement.

12. "The *union shop agreement* referred
1 above *was negotiated by the labor union*
the railroad defendants without any authori
employees of such railroad defendants embr
craft or trade applicable to each labor u
[ital. ours] other than such authority as m
from each labor union defendant's being
bargaining representative of employees wi

or trade for the purposes of the Railway Labor Ac
the dates and as set forth in paragraph 13. The
processes of the defendant unions in determining col
bargaining policy were followed. Such processes
and in the instance of the negotiation and execution
union shop agreement did not, involve any notice
employees of the railroad defendants that the nego
and execution of such an agreement was contempla
any opportunity to express their wishes pro or co
respect to such negotiation and execution of the unio
agreeement, or any opportunity to ratify or rejec
action.

14. "Each of the plaintiffs and intervening plainti
employed for many years by one of the railroad defe
prior to the execution of the union shop agreement
above referred to, and that also is true of many oth
the class represented by the plaintiffs and inter
plaintiffs, *and none of such persons had notice p
entering into an employment relationship with suc
road defendant that union membership would at a
be required as a condition of employment or co
employment* [ital. ours].

19. "The periodic dues, fees and assessments whic
tiffs, intervening plaintiffs and the class they rep
have been, are and will be required to pay under the
of the union shop agreement hereinabove referred t
been, are being, and *will be used in substantial part f
poses other than the negotiation, maintenance, and
istration of agreements concerning rates of pay, ru
working conditions, or wages, hours, terms and oth
ditions of employment, or the handling of disputes r
to the above, but to support ideological and politic
trines and candidates which plaintiffs, intervening
tiffs, and the class represented by them, were, are a
be opposed to and not willing to support voluntaril*
ours].

20. "The mechanism by which the perio
and assessments required to be paid under th
union shop agreement were, are and will b
stantial part to support ideological and poli
and candidates for public office which plaintif
plaintiffs, and the class represented by ther
ing to support, is as set forth in this Stipu

A substantinal portion of the periodic due
sessments required of plaintiffs, intervening
the class they represent, or which will be so
been, is being and will be retained by, or re
individual local lodge of the labor union defe
each such person paid and will be required t
and has been, is being, and will be, used to
lative activity in the legislatures of the S
covered by the membership of such local lo
miscellaneous general legislation not confi
tion involving the negotiation, maintenance
tration of agreements concerning rates of
working conditions, or wages, hours, terms
ditions of employment, or the handling of
ing to the above and, except in Wisconsin, N
Pennsylvania, Indiana, Texas and Iowa, *to e
tial financial support to candidates for publ
executive, legislative and judicial branches o
local governments in the locality of the loc*
ours].

21. "Some of the legislative and politica
ferred to in the preceding paragraph are
some of the individual local lodges of the l
fendants, and in some situations, such activ
and will be carried out on a cooperative b
lodges of several of the defendant unions co
only between themselves, but also with local
unions not defendants in this litigation, thro
trict and local AFL-CIO central bodies and

tees on Political Education as well as ad hoc comm
and in some instances the financial support for su
legislative and political activities is derived not on
the local lodge organizations but also from direct
from the general dues funds of the national or gran
organization of a particular labor union defendant.

In each instance where 'general fund' or 'gener
fund' or like phrase is employed in this Stipulation
(except where used in reference to the Machinists N
tisan Political League, where the phrase is used to
the 'political' fund which is derived from individu
tributions), it refers to the fund or account, or th
thereof, derived and maintained from periodic du
and assessments of the members of such organiza

22. "A substantial proportion of the periodic du
and assessments collected by the labor union def
from their members was, is, and will be transmitte
retained by, their respective national or grand lo
ganizations.

29. "Railway Labor's Political League was for
the specific purpose of engaging in political activiti
ing with the election of candidates to public offic
organization maintains two funds—one the so-call
cational' fund and the other the so-called 'free' fun
way Labor's Political League received, receives,
receive direct grants into its 'educational' fund f
general funds of the union defendants and from t
way Labor Executives' Association. The monies
'educational' fund are used, except in Wisconsi
Hampshire, Pennsylvania, Indiana, Texas, and I
support candidates for public office at the State an
level; for publicity to support candidates on the nat
well as the State and local level; for administra
penses to operate Railway Labor's Political Leag
erally (including the salaries of the paid employees
organization, office expense, supplies, etc.); and for

laneous activities in supporting candi
tiffs, intervening plaintiffs, and the c
oppose) at the national, State or local
portation of voters to and from the po
distribution of voting records, prepar
tion af sample ballots, and the preparat
of various types of political literature s
ing support for candidates for public o
State and local levels.

The administration, operation and
'free' fund activities of Railway Labo
has been, is and will be financed and
expenditures from the 'educational' f
bor's Political League derived from th
of the labor union defendants.

43. "The funds expended by the lab
for political activities as set forth in
Facts are substantial, and the propor
the periodic dues, fees and assessmen
paid, or which will be required to be p
and intervening plaintiffs and the c
are also substantial, and the amounts
are and will be used ultimately for po
also substantial.

44. "The plaintiffs, intervening plai
they represent have been and are opp
their money by the labor union defend
Executives Association, Railway Labo
Machinists Non-Partisan Political Le
Federation of Labor and Congress of
tions, and the Committee on Politica
AFL-CIO which they have been, are
to pay in dues, fees and assessments
and support of the legislation, ideo
doctrines and candidates for public off
are and will be supported and endorse

idates (whom plain-
class they represent
level, such as trans-
olls, preparation and
aration and distribu-
ation and distribution
soliciting or influence
office on the national,

d maintenance of the
bor's Political League
d supported by direct,
fund of Railway La-
the general dues funds

abor union defendants
in this Stipulation of
portionate amounts of
ments which are being
e paid, by the plaintiffs
e class they represent
nts of such dues which
political purposes are

plaintiffs, and the class
opposed to the use of
endants, Railway Labor
abor's Political League,
League, the American
of Industrial Organiza-
litical Education of the
are and will be required
ents for the indorsement
ideologies and political
ic office which have been
lorsed by the labor union

defendants, Railway Labor Executives Ass
way Labor's Political League, Machinists
Political League, the American Federation
Congress of Industrial Organizations, or t
on Political Education of the AFL-CIO as
Stipulation of Facts, or for other purposes
negotiation, maintenance and administration
concerning rates of pay, rules and working
wages, hours, terms and other conditions o
or the handling of disputes relating to the

53. "The political activities mentioned in
tion of Facts do not involve and are unnec
negotiation, maintenance and administrati
ments concerning rates of pay, rules and w
tions, or wages, hours, terms and other
employment, or the handling of disputes r
above.

56. "The labor union defendants and, in m
subsidiary lodges and organizations subjec
visions of their governing constitutions and
power to make assessments and to increase t
level of the dues and fees required for memb
organizations, and plaintiffs and interver
and the class they represent are and will
pay any such increased amounts in order t
employment under the terms of the union sh

75. "In each instance where support
ideologies, or legislation is referred to in th
of Facts, such reference is intended to cove
affirmative support of particular candida
or legislative issues, but also opposition to ot
ideologies or legislative issues.

76. "The determination of the legislative
ideological programs and activities of th
defendants, Railway Labor Executives Ass

way Labor's Political League, the Machinists Non-Partisan Political League, the AFL-CIO or the latter's Committee on Political Education, as set out in this Stipulation of Facts and the depositions referred to in the Stipulation attached hereto, does not involve participation by the plaintiffs, intervening plaintiffs and the class they represent; the views of plaintiffs, intervening plaintiffs and the class they represent have not been sought; and they have not ratified such activities or programs, nor have they acquiesced therein."

The stipulation also details the amounts of dues or fees paid by named plaintiffs to specific defendant unions under the terms of the bargaining agreement.

The cause, by agreement of the parties, was heard by the court without the intervention of a jury on plaintiffs' prayers for a permanent injunction. After a hearing and argument of counsel, the court entered an order, consisting of findings of fact, conclusions of law and a final decree granting the relief sought by the plaintiffs. The court found and decreed that: (1) "The court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants; (2) "Effective April 15, 1953, the labor organization defend-

ants, without authority from the employees represented by them but relying upon such authority as might be implied from the Railway Labor Act, and without affording said employees any opportunity to express themselves with respect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and those represented by plaintiffs, must 'as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class (the labor organization defendants herein) within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organizations' and that 'Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership'; (4) "Pursuant to the said union shop agreements, and, except as indicated in paragraph (3) above, each of the plaintiffs and each member of the class they represent has been, is being, and, unless the injunction requested by them is granted, will be compelled to pay initiation fees, reinstatement fees and periodic dues in substantial amounts to the labor organization defendant representing his or her craft or trade as a condition of employment or continued employment, and to become or remain a member of said labor organization defendant; (5) "The funds so exacted from plaintiffs and the class they

represent by the labor union defendants have been
are being, used in substantial amounts by the latt
support the political campaigns of candidates fo
office of President and Vice President of the United S
and for the Senate and House of Representatives o
United States, opposed by plaintiffs and the class
represent, and also to support by direct and in
financial contributions and expenditures the po
campaigns of candidates for State and local public o
opposed by plaintiffs and the class they represent.
said funds are so used both by each of the labor
defendants separately and by all of the labor
defendants collectively and in concert among thems
and with other organizations not parties to this a
through associations, leagues, or committees forme
that purpose; (6) "Those funds have been and are
used in substantial amounts to propagate political
economic doctrines, concepts and ideologies and to pr
legislative programs opposed by plaintiffs and the
they represent. Those funds also have been and
being used in substantial amounts to impose
plaintiffs and the class they represent, as well as
the general public, conformity to those doctrines, con
ideologies and programs; (7) "The exaction of m
from plaintiffs and the class they represent fo
purposes and activities described above is not reaso
necessary to collective bargaining or to maintainin
existence and position of said union defendants as eff
bargaining agents or to inform the employees whom
defendants represent of developments of mutual int
(8) "The exaction of said money from plaintiffs an
class they represent, in the fashion set forth above b
labor union defendants, is pursuant to the union
agreements and in accordance with the terms and c
tions of those agreements. Said union shop agree
were negotiated and entered into and are maint
administered and enforced by the labor union defen

pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sect. 151 *et seq*) and particularly Section 2 (First), (Second), (Third), (Fourth), (Seventh), and (Eleventh), 5, 6 and 10 thereof. Said union shop agreements are permitted by Section 2 (eleventh) of the Railway Labor Act (45 USC 152) 'notwithstanding any other provision of this Act, or of any other statute or law of the United States, or territory thereof, or of any State.' Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State, and are contrary to the statutes or laws of other states in which the defendant railroads operate. Said exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which in the First, Fifth, Ninth and Tenth Amendments thereto guarantees to individuals protection from such unwarranted invasion of their personal and property rights, (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their political freedom and rights) under the cloak of federal authority." On the basis of these findings the trial court perpetually enjoined the defendants "from enforcing the said union shop agreements (copies of which are attached as exhibits to the petition herein) and from discharging petitioners, or any member of the class they represent, for refusing to become or remain members of, or pay periodic dues, fees, or assessments to, any of the labor union defendants, provided, however, that said defendants may at any time petition the court to dissolve said injunction upon a showing that they no longer are engaging in the improper and unlawful activities described above;" and granted money judgments in favor of three plaintiffs.

The union defendants filed their bill of exceptions in this court in which they assigned error on interlocutory

rulings and the final decree, generally and specially, o
trial court.

1. Error is assigned on the order allowing the an
ment of January 29, 1957 over the objection that it
too late to change the cause of action (that the close
union shop agreement violated the First, Fifth, Ninth
Tenth Amendments to the Federal Constitution).
exception cannot be entertained because the order
cepted to was entered prior to the order dismissing
petition, which order was reviewed and reversed by
court in Looper v. Georgia Southern & Florida Ry.
supra, and the union defendants not having sought
view of the order of January 29, 1957 by cross-ill
exceptions, it is too late now to except. Gauldi
Gaulding, 210 Ga. 638 (81 S.E. 2d 830); Carmichael
Co. v. McClelland, 213 Ga. 656 (100 S.E. 2d 902).

2. Error is assigned on the order allowing the an
ment to plaintiffs' petition of September 23, 1958
this amendment certain paragraphs of the petition
deleted and new paragraphs inserted. This amend
set out specific facts as to the employment of the se
plaintiffs with the railroad defendants and alleged tha
dues, fees and assessments required by the union de
ants are being and will be used to espouse and su
political and economic ideologies repugnant to the
tiffs and the class they represent. It further alleged
the sole authority under which the union defendants
ported and purport to bargain and contract with the
road defendants is by virtue of the Railway Labo
(45 U.S.C.A. §§ 152, 156) and that the closed shop
tract executed by the defendants is contrary to the
and public policy of the State of Georgia; and, in s
as the Railway Labor Act permits or authorizes the
defendants to use the dues, fees and assessments pa
union members for ideological and economic doctrine

support political candidates, which and whom the plaintiffs oppose, the same violates the provisions of the First, Fifth, Ninth and Tenth Amendments to the Federal Constitution. The objections to this amendment were on the grounds that (a) it changed the cause of action, (b) sought to change the theory of the case, (c) sought further relief not theretofore sought and (d) the assertion of federal rights was precluded because of the plaintiffs' motion to remand the case from the Federal District Court.

There is no merit to any of these objections. When the case was reviewed by this court (Looper v. Georgia Southern & Florida Ry. Co., supra) the plaintiffs' right to proceed was sustained by reason of the allegations that the agreement violated federal rights. The amendment merely elaborated the allegations originally asserted.

3. On May 8, 1958 at a pre-trial hearing the court granted plaintiffs' oral motion requiring the defendant unions to produce books, records and documents over the objection that the defendant unions had no notice that such motion would be presented. Subsequently, the union defendants filed a motion, which was denied, to suspend this order until their plea of res adjudicata was passed upon. (The record discloses that this plea was subsequently withdrawn). It is asserted that these orders deprived the defendant unions of due process of law and the equal protection of the law as guaranteed by the Fourteenth Amendment, in that these rulings deprived them of an adequate opportunity to defend the case. (The bill of exceptions recites that no constitutional questions were made or argued to the court and no objection was made to the introduction of the stipulation of facts). It is further asserted that after all the evidence had been introduced the court denied the oral request of counsel for the defendant unions to postpone oral argument until a transcript of the proceedings had been completed and brief prepared; and that after the court had orally announced

its conclusions, and counsel had presented
suggested order, the court allowed counsel
ant unions insufficient time, before signin
consider and offer objections as to the term
They contend that this hasty procedure de
their right to make a proper and adequate

Unless the legal rights of the parties
or denied, this court will not interfere with
of the trial court in matters of practice in t
disposition of causes before it unless this
power has been exercised in an illegal, unju
manner. Johnson v. Holt, 3 Ga. 117(1); Coo
Ga. 473(3); Mayor &c. of the City of Cuth
49 Ga. 179(2); Branch v. The Planters' Lo
Bank, 75 Ga. 343(1). We have carefully
error assigned on the manner in which
heard and disposed of the motions and r
trial of this case and cannot say that his
them was illegal, arbitrary or an abuse of

4. We next consider the assignments of erro
findings of fact and conclusions of law co
final decree. These objections are set ou
5-11 incl., 13-18 incl. and 22 of the bill of
would serve no useful purpose to enumer
objections here. The findings and conclusio
are fully supported by the pleadings and th
we find no error in these assignments of e

5. To the provision of the final decree that
an adjudication of the basic common righ
the plaintiffs in their own behalf and in
employees of the defendant railroads simil
the union defendants assign error on the
the case cannot properly or lawfully ad
of persons other than the named plaintiffs
ing plaintiffs because the persons describe

ing the class cannot properly constitute a class
purpose of a class action," and "that a class acti
not be brought or maintained on behalf of a gro
components of which are determined by ascertain
mental attitude of persons concerning certain ma
The case as finally amended was on behalf of pl
and all others similarly situated, who had a comm
terest in the relief sought. There were no de
interposed that the complaint was not a prope
action as permitted under Code § 37-1002. The
stipulation of facts contains the following:

5. "There are a substantial number of other em
of the railroad defendants who similarly have bee
pelled by the union shop agreement, against their
to become members of the defendant labor union
zations in order to maintain their employment.

6. "There were a substantial number of emplo
the railroad defendants whose employment was ter
against their wishes, although their services were
factory, by reason of the enforcement of the unio
agreement and the refusal of such persons to
members of the labor union defendants.

7. "The plaintiffs and intervening plaintiffs fai
adequately represent for the purposes of this li
the interests of the employees and former emplo
the railroad defendants specified in the two pr
paragraphs, as well as those whose status as m
of one of those two groups has not as yet been
determined, these being all those employees or
employees of the railroad defendants affected
opposed to the union shop agreement who also are
to the periodic dues, fees and assessments which th
been, are and will be required to pay to support ide
and political doctrines and candidates and legislati
grams set forth in this Stipulation of Facts and the
tions referred to in the Stipulation attached he

for other purposes other than the negotiati
and administration of agreements concerni
rules and working conditions, or wages,
other conditions of employment or the hand
relating to the above."

The plaintiffs and the class they repres
mon interest in the subject matter of th
ultimate issues decided. 'The objection int
phase of the decree is without merit.' See
Co. v. Hicks, 185 Ga. 507 (195 S.E. 564);
ville & Nashville Ry. Co., 191 Ga. 395 (1
Liner v. City of Rossville, 212 Ga. 664 (94

6. The court found as a matter of fact th
funds have been and are being used in subs
to propagate political and economic doct
and ideologies and to promote legislative
posed by plaintiffs and the class they re
funds also have been and are being used
amounts to impose upon plaintiffs and
represent, as well as upon the general pu
to those doctrines, concepts, ideologies and
"The exaction of monies from plaintiffs
they represent for the purposes and acti
above is not reasonably necessary to col
ing or to maintaining the existence and
union defendants as effective bargaining
inform the employees whom said defendan
developments of mutual interest." Unde
ruling (Looper v. Georgia Southern & F
supra) that the allegations of the petition
to state a cause of action for equitable re
ing became the law of the case, the evid
trial court not only authorized, but dem
by the court that the plaintiffs had prov
laid in the amended petition. In the st
case we have set out the pertinent portio

lation of facts. The record in this case contain
pages which in the main consists of documentary
To brief the evidence or to state a capsule sum
the same would serve no useful purpose. We h
viewed this evidence. It fully supports the con
of the trial court.

7. The court found as a matter of law that:

(8) "The exaction of said money from plainti
the class they represent, in the fashion set fort
by the labor union defendants, is pursuant to th
shop agreements and in accordance with the ter
conditions of those agreements.

"Said union shop agreements were negotiated
tered into and are maintained, administered and
by the labor union defendants and the railroad de
pursuant to the provisions of the Railway Labor
U.S.C. Sect. 151 *et seq.* and particularly Section 2
(Second), (Third), (Fourth), (Seventh) and (El
5, 6 and 10 thereof.

"Said union shop agreements are permitted by
2 (eleventh) of the Railway Labor Act (45 U.S
"notwithstanding any other provision of this Ac
any other statute or law of the United States, or
thereof, or of any State.

"Said exaction and use of money and said uni
agreements and their enforcement are contrary
Constitution, the law and public policy of this St
are contrary to the statutes or laws of other
which the defendant railroads operate. Said
and use of money, said union shop agreements
tion 2 (eleventh) of the Railway Labor Act a
enforcement violate the United States Constitutio
in the First, Fifth, Ninth and Tenth Amendments
guarantees to individuals protection from such
ranted invasion of their personal and property

(including freedom of association, freed
freedom of speech, freedom of press, free
their political freedom and rights) under
eral authority." Division 11 of the bi
assigns error on this conclusion.

In our opinion it cannot be disputed
shop agreement between the railroad and
was executed only by virtue of Section
the Railway Labor Act (45 U.S.C.A. § 15
tion of the federal act permits or allows
to make contracts in violation of the con
of the plaintiffs, they have the right
validity of the contract in so far as it ma
rights under the Federal Constitution.
Dept. v. Hanson, 351 U.S. 225 (76 S. Ct.
1112); American Communications Assoc
339 U.S. 382 (70 S. Ct. 674, 94 L. Ed. 925
Ry. Co., 323 U.S. 192 (65 S. Ct. 226, 89 L

The fundamental constitutional question
tract between the employers of the plainti
defendants, which compels these plaintiffs,
to work for the employers, to join the un
spective crafts, and pay dues, fees and as
unions, where a part of the same will be
political and economic programs and cand
office, which the plaintiffs not only do app
violate their rights of freedom of speech a
of their property without due process of law
and Fifth Amendments to the Federal Co

The Bill of Rights does not confer right
"shall nots" of what the government, its
acting under the aegis of its authority can
the enumerated rights of the individual.
of Independence contained 27 specificatio
that the English King and Parliament ha
individuals living in the American Colonie

was a declaration of protest against trespass by go
on the rights of individuals and an affirmation of th
rights of man so forthrightly set forth more than
dred years later in the Bill of Rights. Chapter 29
Carta declared : "No freeman shall be taken or im
or disseized of his freehold or liberties or free cu
outlawed or exiled or in any way destroyed; nor
go upon him, nor send upon him but by the law
peers or by law of the land."

During Georgia's colonial period its citizens w
to pay for the support of one religious denominat
exclusion of others. To guarantee the people of
that no one should ever be compelled to attend o
any church, contrary to his own faith and judgm
to restrain the arm of government from ever at
directly or indirectly, to mould the religious beli
people, the Constitution of Georgia of 1798 cont
provision: "No person within this State shall, upo
tence, be deprived of the inestimable privilege of
ping God in a manner agreeable to his own conse
be compelled to attend any place of worship co
his own faith and judgment; nor shall he ever b
to pay tithes, taxes, or any other rate, for the
or repairing any place of worship, or for the ma
of any minister or ministry, contrary to what h
to be right, or hath voluntarily engaged to do.
religious society shall ever be established in this
preference to another; nor shall any person be
enjoyment of any civil right merely on account of
ous principles." Art. 4, Sec. 10.

The Bill of Rights are the untouchable rights
dividual wherein the exercise of them, no harm
results to others or to the public. Coercion or c
is the antithesis of freedom or liberty. In th
choice, support or association, of or with the p
economic views of others, the individual has th

right not only to disagree but to reb
mentation or restraint in the exercise
Mr. Justice Douglas in his dissenti
Utilities Commission of the District
343 U.S. 351 (72 S.Ct. 813, 96 L. Ed. 1
meaning of liberty as used in the Fi
"The right to be let alone is indeed
freedom. . . . Compulsion which com
can be as real as compulsion which
mand."

Certain observations of the late M
writing the majority opinion for the
Board of Education v. Barnette, 319 U
87 L. Ed. 1628), a case involving th
rules adopted by a local board of educ
of a state statute, requiring student
salute the flag and pledge allegiance
upon penalty of expulsion for refusal
of repetition here. In holding that su
violated the First and Fourteenth Am
Jackson said: "The very purpose of a
withdraw certain subjects from the v
controversy, to place them beyond th
and officials and to establish them as
applied by the courts. One's right
property, to free speech, a free press
and assembly, and other fundament
submitted to vote; they depend on th
tion [at page 638]. . . . Those who b
tion of dissent soon find themselve
senters. Compulsory unification of
the unanimity of the graveyard [at
set up government by consent of the
of Rights denies those in power any
coerce that consent [at page 641].
fixed star in the constitutional con

ebel against either regi-
se of his own judgment.
ting opinion in Public
t of Columbia v. Pollak,
1068), in discussing the
Fifth Amendment said:
ed the beginning of all
mes from circumstances
ich comes from a com-

Mr. Justice Jackson in
e court in West Virginia
9 U.S. 624 (63 S.Ct. 1178,
the constitutionality of
ducation under authority
ents in public schools to
nce to the United States,
sal to comply, are worthy
t such compulsory action
Amendments, Mr. Justice
of a Bill of Rights was to
ne vicissitudes of political
d the reach of majorities
as legal principles to be
ight to life, liberty, and
ress, freedom of worship
ental rights may not be
n the outcome of no elec-
ho begin coercive elimina-
selves exterminating dis-
of opinion achieves only
[at page 641]. . . . We
the governed, and the Bill
any legal opportunity to
41]. . . . If there is any
constellation, it is that

no official, high or petty, can prescribe what sh
dox in politics, nationalism, religion, or othe
opinion or force citizens to confess by word
faith therein. If there are any circumstance
mit an exception, they do not now occur to
642]."

One who is compelled to contribute the fruits
to support or promote political or economic
support candidates for public office is just as m
of his freedom of speech as if he were compell
vocal support to doctrines he opposes. Abra
asserted a similar view when he said: "I belie
vidual is naturally entitled to the fruits of his
as it in no wise interferes with any other m
There is a common saying that, "Money talks
louder than the spoken word." In the case at
sonal convictions of the plaintiffs on political
issues are being combatted by the use of th
contributions to foster programs and ideo
they oppose.

This is not a case where the plaintiffs
employment with the railroads which have
agreements providing that to be employed
be required to join a union, but one wher
in the employ of the railroads at the time
agreements were entered into between the
They are now confronted with the choice of e
the union or surrendering their jobs and benef
from tenure of service, and seeking work elsew
requirement by the employer of his employee, a
of his employment, that he agree not to join
jecting himself to be discharged if he did (n
by the Railway Labor Act, 45 U.S.C.A. § 152
tional Relations Act, 29 U.S.C.A. § 157) is obn
employee's economic freedom to contract, the
ment by the employer, based upon an act of

Congress, that one in his employ as a condition of continued employment, would be compelled to join a union and pay dues, fees and assessments which will be used in part for the support of ideologies he opposes, is likewise violative of his freedom to contract under the Fifth Amendment.

While these observations of the Bill of Rights may appear as being old-fashioned and representative of the views of statesmen and judges long since dead, and not in harmony with some schools of thought that maintain that the Constitution must be construed or applied to meet new conditions in the light of present day thought, and that the Constitution must be expanded or contracted—as if it were an elastic girdle—to accommodate the public diet, we will continue to adhere to the view that the Constitution can only be changed by the method provided therein.

In light of our prior decision in this case, and what has been said above and the evidence in this case, the final decree was not erroneous for any reason assigned.

Judgment affirmed. All the Justices concur.

APPENDIX C

BIBB SUPERIOR COURT

No. 16,537

NANCY M. LOOPER, *et al.*,

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY, et al.

Findings, Conclusions, Order, Judgment and Decree

The above-styled cause, by agreement of all parties, having come on regularly to be tried by this Court without a jury, November 10 to 13, and November 20, 1958. The

Court, after receiving evidence and hearing oral argument and considering the entire record finds and concludes that:

(1) The Court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants.

(2) Effective April 15, 1953, the labor organization defendants without authority from the employees represented by them but relying upon such authority as might be implied from the Railway Labor Act, and without affording said employees any opportunity to express themselves with respect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and those represented by plaintiffs, must "as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class (the labor organization defendants herein) within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organizations" and that "Nothing in this agreement shall require

an employe to become or to remain a member organization if such membership is not available employe upon the same terms and conditions generally applicable to any other member, or if the ship of such employe is denied or terminated for any other than the failure of the employe to tender the dues, initiation fees, and assessments (not includi and penalties) uniformly required as a condition quiring or retaining membership."

(3) Said union shop agreements are being enfo the labor organization defendants and the railr fendants with respect to plaintiffs and the cla represent, except as to three of the named plaintiff who have filed bonds pursuant to order of this Co pending the effectiveness of the agreements pend determination of this litigation, and as to them th shop agreements would be enforced but for the of such bonds.

(4) Pursuant to the said union shop agreemen except is indicated in paragraph (3) above, each plaintiffs and each member of the class they repre been, is being, and, unless the injunction reque them is granted, will be compelled to pay initiati reinstatement fees and periodic dues in substantial to the labor organization defendant representing her craft or trade as a condition of employment tinued employment, and to become or remain a me said labor organization defendant.

(5) The funds so exacted from plaintiffs and t they represent by the labor union defendants hav and are being, used in substantial amounts by th to support the political campaigns of candidates offices of President and Vice President of the United and for the Senate and House of Representatives United States, opposed by plaintiffs and the cla represent, and also to support by direct and

financial contributions and expenditures the political campaigns of candidates for State and local public offices, opposed by plaintiffs and the class they represent. The said funds are so used both by each of the labor union defendants separately and by all of the labor union defendants collectively and in concert among themselves and with other organizations not parties to this action through associations, leagues, or committees formed for that purpose.

(6) Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent. Those funds have also been and are being used in substanial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity to those doctrines, concepts, ideologies and programs.

(7) The exaction of moneys from plaintiffs and the class they represent for the purposes and activities described above is not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest.

(8) The exaction of said money from plaintiffs and the class they represent, in the fashion set forth above by the labor union defendants, is pursuant to the union shop agreements and in accordance with the terms and conditions of those agreements.

Said union shop agreements were negotiated and entered into and are maintained, administered and enforced by the labor union defendants and the railroad defendants pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sect. 151 *et seq*) and particularly Section 2(First),

(Second), (Third), (Fourth), (Seventh) and (E
5, 6 and 10 thereof.

Said union shop agreements are permitted by S
(Eleventh) of the Railway Labor Act (45 USC 15
withstanding any other provision of this Act, o
other statute or law of the United States, or
thereof, or of any State."

Said exaction and use of money and said uni
agreements and their enforcement are contrary
Constitution, the law and public policy of this St
are contrary to the statutes or laws of other s
which the defendant railroads operate. Said exac
use of money, said union shop agreements and S
(eleventh) of the Railway Labor Act and their
ment violate the United States Constitution whic
First, Fifth, Ninth and Tenth Amendments there
antees to individuals protection from such unw
invasion of their personal and property rights, (i
freedom of association, freedom of thought, fre
speech, freedom of press, freedom to work a
political freedom and rights) under the cloak of
authority.

(9) Unless enjoined, defendants will continue t
plained of acts above mentioned, the union sho
ments having no termination date, and the injury t
tiffs will be irreparable.

(10) The labor union defendants, by their comm
of funds used for collective bargaining purposes
tivities and those used for the complained of purp
activities set forth above have made it impossible t
gate the amount of dues collected from plaintiffs
class they represent which are and will be used
lective bargaining purposes from those which are
be used for the complained of purposes and activi
forth above.

WHEREFORE, it is ORDERED, ADJUDGED and DECREED that:

Defendants, Georgia Southern and Florida Railway Company; Southern Railway Company; Cincinnati, New Orleans and Texas Pacific Railway; Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; Carolina and Northwestern Railway Company; New Orleans Terminal Company; St. Johns River Terminal Company; Harriman and Northeastern Railroad Company; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmith, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhoood of Railroad Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; National Organization Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America; L. C. Ritter, R. H. Hubbard, Norman Dugger, J. R. Westbrook, John Pelkafer, T. B. Steadman, C. J. Brice, D. C. Bruns, W. G. Roberts, H. H. Dent, J. J. Duffy, B. R. Acuff, T. J. Roberts, Irvin Barney, W. W. Dyke, W. B. Chapman, Anthony Matz, J. H. Desotell, Lewis Craig, George M. Harrison, G. A. Link, J. D. Avera; J. P. Alexander, C. W. Ball, R. K. Lanfair, F. G. Gardner, H. R. Duensing, E. V. Peed, Jesse Clark, E. C. Melton, F. O. Dasher, B. T. Hurst, John M. Bishop, W. L. Ball, William O. Holmes, O. H. Braese, P. M. Crawford, T. W. Grimmett, M. G. Schoch, H. E. Ivey, T. J. Dame, and Charles J. MacGowan, and all persons, firms or corporations acting in concert with them, be and they hereby are perpetually enjoined from enforcing the

said union shop agreements (copies of whi
as exhibits to the petition herein) and fr
petitioners, or any member of the class
for refusing to become or remain memb
periodic dues, fees, or assessments to, an
union defendants, provided, however, that
may at any time petition the court to disso
tion upon a showing that they no longer
the improper and unlawful activities descri

In response to the prayers of the plaint
railroad defendants for declaratory judgm
declare Section Two (Eleventh) of the said
Act to be unconstitutional to the extent
or is applied to permit, the exaction of funds
and the class they represent for the comp
poses and activities set forth above, and I
the union shop agreements, copies of whic
to the petition, to be null, void, and of no ef
the parties, and that the above-described
said union shop agreements is illegal in t
plaintiffs, and the class they represent, of
tioned personal rights guaranteed by the
the United States and the laws and polic
and other States as set forth above. I fu
declare that plaintiffs are entitled to the
periodic dues, fees and assessments which
compelled to pay the labor union defend
terms of the union shop agreements.

IT IS FURTHER ORDERED and DECREED THA

Hazel E. Cobb do have and recover of the
Brotherhood of Railway and Steamship
Handlers, Express and Station Employees,
bers thereof, the sum of . . . $158.25;

J. H. Davis do have and recover of the
Brotherhood of Railway and Steamship

Handlers, Express and Station Employees, and the
bers thereof, the sum of . . . $133.50;

S. B. Street do have and recover of the defendan
Brotherhood of Railway and Steamship Clerks, F
Handlers, Express and Station Employees, and the
bers thereof, the sum of . . . $151.50;

This decree and order shall operate as an adjudi
of the basic common rights asserted by plaintiffs in
own behalf and on behalf of other employees of th
fendant railroads similarly situated, and shall not
stitute any adjudication of claims for monetary da
or for refund of dues, fees or assessments, if any, o
members of such class who have not made an indiv
personal appearance in this case.

It is further ordered that the plaintiffs have and re
of the defendants judgment in the sum of $210.45,
for the use of the officers of the Court.

This 8th day of Decemb r, 1958.

/s/ O. L. Long
Judge of Superior C
Macon Judicial Cir

Proof of Service

I, Milton Kramer, one of the attorneys f
herein, and a member of the Bar of the S
the United States, hereby certify that on
July, 1959, I served copies of the foregoi
Statement on the several parties thereto

1. On the individual appellees, by mai
duly addressed envelope, with airmail po
their attorneys of record, Gambrell, Harl
& Richardson, 825 Citizens & Southern Na
ing, Atlanta 3, Georgia.

2. On the railroad company appellees,
rate copies in duly addressed envelopes, v
age prepaid, to their respective attorneys
Hall, Groover & Hawkins, 520 First Nati
ing, Macon, Georgia, and Harris, Russell,
kins, Persons Building, Macon, Georgia.

.....

MILTON KR